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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR       | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------------|---------------------|------------------|
| 09/903,769  | 07/13/2001  | Laurence Sebillotte-Arnaud | 210356US0           | 1466             |
| 22850   | 7590        | 10/22/2003                 | EXAMINER            |                  |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                            | MRUK, BRIAN P       |                  |
|   |             | ART UNIT                   | PAPER NUMBER        |                  |
|   |             | 1751                       |                     |                  |

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                          |
|------------------------------|------------------------|--------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>      |
|                              | 09/903,769             | SEBILLOTTE-ARNAUD ET AL. |
|                              | <b>Examiner</b>        | <b>Art Unit</b>          |
|                              | Brian P Mruk           | 1751                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 05 August 2003.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-4 and 6-29 is/are pending in the application.

4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 6-16 and 21-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.                            6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed August 5, 2003.

Applicant has amended claims 1, 4 and 9. Claim 5 has been cancelled. New claims 22-29 have been added. Claims 17-20 remain withdrawn from consideration.

Currently, claims 1-4 and 6-29 remain pending in the application.

2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 8.

3. The rejection of claims 1-4, 6-8, 12-15 and 21 under 35 U.S.C. 102(b) as being anticipated by Dubief et al, U.S. Patent No. 5,824,296, is withdrawn in view of applicant's amendments and remarks. Specifically, applicant has amended instant claim 1 to require between 1-15% by weight of a hydrophobic silica component, which is not taught by Dubief et al, U.S. Patent No. 5,824,296.

4. The rejection of claims 1-4, 6-13, 16 and 21 under 35 U.S.C. 102(b) as being anticipated by Uemura et al, EP 514,760, is maintained for the reasons of record.

5. The rejection of claims 1-4, 6-16 and 21 under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, WO 96/28140, is maintained for the reasons of record.

6. The rejection of claims 1-4, 6-16 and 21 under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, U.S. Patent No. 6,277,797, is maintained for the reasons of record.

#### **NEW GROUNDS OF REJECTION**

##### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 22, 23, 25 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Uemura et al, EP 514,760.

Newly added claims 22, 23, 25 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Uemura et al, EP 514,760, for the reasons of record found in the last Office action, Paper No. 8, Paragraph No. 6.

##### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made:

10. Claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, WO 96/28140.

New claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, WO 96/28140, for the reasons of record found in the last Office action, Paper No. 8, Paragraph No. 8.

11. Claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, U.S. Patent No. 6,277,797.

New claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, U.S. Patent No. 6,277,797, for the reasons of record found in the last Office action, Paper No. 8, Paragraph No. 9.

### ***Response to Arguments***

12. Applicant's arguments filed August 5, 2003 have been fully considered but they are not persuasive.

Applicant argues that Uemura et al, EP 514,760, does not teach a foaming surfactant in Example 7. Specifically, applicant argues that the polymethacryloyloxy ethyl trimethylammonium chloride component in Example 7 is not a foaming surfactant. However, the examiner respectfully asserts that the polyoxyethylene hydrogenated

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castor oil 40 EO adduct component and the 1-hexyl-3-undecamethylhexasiloxane propynyl glycerol component in Example 7 are nonionic foaming surfactants, and thus meet the requirements of the instant invention. The examiner agrees with applicant that the polymethacryloyloxy ethyl trimethylammonium chloride component in Example 7 is a cationic polymer, and not a foaming surfactant, but asserts that the above mentioned nonionic surfactant components in Example 7 of Uemura et al meet the "foaming surfactant" limitation of the instant invention. Applicant further argues that it is not clear if the silica in Example 7 of Uemura et al is hydrophobic or non-hydrophobic. However, the examiner respectfully asserts that the examiner addressed this issue in the last Office action. Specifically, the examiner asserted in Paper No. 8, Paragraph No. 6 that the silica component in Example 7 would inherently meet the silica property requirements (i.e. hydrophobic, etc.) of the instant invention, absent a showing otherwise. Thus, the examiner asserts that the burden is with applicant to show that the silica is non-hydrophobic. Since applicant's speculation that the silica in Example 7 is not generally hydrophobic is not a proper showing, the examiner asserts that applicant has not met the burden of showing that the silica is non-hydrophobic.

Applicant argues that Glenn, Jr. et al, WO 96/28140, and Glenn, Jr. et al, U.S. Patent No. 6,277,797, do not teach the claimed oxyalkylenated thickening agents required in the instant invention. However, the examiner asserts that both of the "Glenn" references do indeed teach this limitation. Specifically, both "Glenn" references teach the inclusion of polyethylene glycol (see page 17 of WO 96/28140 and cols. 12-13 of US 6,277,797), which is a preferred oxyalkylenated thickening agent of the instant

invention. Although the "Glenn" references do not describe the polyethylene glycol components as thickening agents, the examiner asserts that polyethylene glycol is traditionally used in cleansing compositions as surfactants, humectants, solutes, thickening agents, etc. Thus, the examiner asserts that the teaching of the polyethylene glycol component in the "Glenn" references meets the oxyalkylenated thickening agent requirement of the instant invention.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
October 16, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
Tech Center 1700